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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3052 OF 2011

Shri. Ajit Krishnarao Tamhankar
and others

..Petitioners

Vs.

Commissioner of Information
Konkan Bench, M.S.Mumbai and Ors. ..Respondents

Shri. Amit Sale advocate for petitioners
Shri. H.G.Wakshe and Abhiman D.Patil advocate for
respondent no.4
Shri. S.N.Bhosale AGP for respondent no.2

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th JULY, 2011.

P.C.:

1. Heard both sides. The petitioners are aggrieved by the order passed by the State Information Commission, Konkan Division imposing penalty of Rs. 100 for not providing information under the Right to Information Act, 2005.
2. From a perusal of the order passed by the State Information Commissioner, Konkan Division dated 12th November, 2010 it is apparent that the information was to be provided by the Public Information Officer working at the relevant time Shri. Ajit Krishnarao Tamhankar who is petitioner no.1 and

one who is presently functioning i.e. Shri. Vijaysingh Raosaheb Bhosale and the fact that both of them are liable to pay penalty, has not been clarified at all. The only reason assigned is that the information which was sought by letter dated 6th November, 2007 has been made available as late as on 17th August, 2010. However, the State Information Commissioner has not adverted to any of the factual materials which were placed before him. The petitioners had pointed out that the Information Officer has to be appointed. The appointment of Information Officer is in terms of the Grades and in paragraph 5 of the petition, the details thereof are set out. Further, when the information was sought by the respondent no.4, by a letter which was forwarded on 12th September, 2007 and which was treated as an application pertains to the employees working in the subject department, their postings and their salaries. The information was to such an extent that costs of providing the same would have been Rs.99,206/-. The information was to be provided by payment of necessary charges but aggrieved by the same, an appeal was preferred by the 4th respondent. In such circumstances, when the appeal order was made available, the petitioners were served with the show cause notice as to why disciplinary action against one of the clerks should not be

taken. That proceedings were subsequently dropped. 4th respondent who was seeking information, then stated that the appeal was disposed of on 6th November, 2007 and it was directed therein that the information should be provided of such items which did not require him incurring costs for providing copies etc. It appears that 4th respondent was not satisfied with this order also and he preferred second appeal. That second appeal came to be disposed of on 5th January, 2008. Even then an appeal was preferred before the State Information Commissioner complaining about the delay in providing the information, it is during the course of such an appeal, that the impugned order has been passed.

- 3.** Repeatedly it has come to my notice that the State Information Commissioner while imposing penalties does not take into account the clear statutory provision. The penalty can be imposed only when the refusal to receive the application for information is without reasonable cause or the information is not furnished within the time specified under Section 7(1) without any reasonable cause or the information is denied malafidely or innocuous, incomplete and misleading information has been provided or the information sought for, is destroyed or the person seeking information is obstructed in any manner in giving it. It

appears that when this penalty was imposed on the petitioners, the State Information Commissioner has not adverted to any of these aspects which are referred to by me above. Further, merely because there was delay in providing information alone does not mean that the petitioners are negligent in providing the same. The imposition of penalty should have been on the touchstone of Section 20(1) and the State Information Commission must record a definite opinion giving reasons as to why the penalty is being imposed. If there is cause shown whether the said cause is reasonable or not be also indicated in the order. In these circumstances, the impugned order cannot be sustained as it is contrary to the plain language of Section 20(1) of the Right to Information Act, 2005. It is accordingly quashed and set aside. Petition succeeds in these terms. No costs.

[S.C. DHARMADHIKARI, J.]